SWEAT BOX CONDEMNED

Supreme Court Roasts Peculiar Police Practice.

A unanimous decision of the Supreme Court in the case of Matsumoto Moritaro, under sentence of death for murder, unqualifiedly condemns the examination of suspected persons by the "sweat box" method and strongly censures the conduct of Chester A. Doyle, a detective, in assaulting the defendant, Moritaro, while under arrest. Nevertheless, the exceptions from the Fifth Circuit Court are overruled and case is remanded to that court. The findings contained in the syllabus are these:

"A confession by a person accused of murder made in the presence of the sheriff, his deputy, a detective and an interpreter not in the employ of the prosecution held admissible in evidence, notwithstanding the fact that the sheriff charged the defendant to tell the truth, and did this because other witnesses had implicated defendant.

"A slight assault by a detective upon defendant during an interview at which the detective sought to obtain a confession from defendant, but failed to do so, held not to affect the admissibility in evidence of a confession made two days subsequently."

Justice Hatch writes the opinion of the court. M. F. Prosser, Deputy Attorney General, appeared for the prosecution, and A. G. Correa for the defendant. Matsumoto Moritaro was convicted and sentenced to death at the March term of the Fifth Circuit Court, Kauai, for the murder of one Albion H. Glennan by exploding seven or eight sticks of giant powder under his bed. Of a number of exceptions to the admission of evidence at the trial, the only one presented to the Supreme Court related to the admissibility of a confession made by the defendant.

Moritaro was arrested in Honolulu and sent to Kauai and while in jail there was interviewed by Detective Chester A. Doyle for the purpose of obtaining a confession from him, if possible. Of this matter the opinion of the court gives the following account:

"Doyle testified to the court, on a hearing had in the absence of a jury, as to the admissibility of the confession, that he started in to ask the defendant everything he could possibly think of leading up to the time he came to the islands and as to his connection with the plantations. Doyle says that the 'defendant told so many conflicting stories and lied so that when we called his attention to his conflicting statements and asked him if he wasn't lying he would remain silent. Every time I questioned him he would tell another story and he would get tripped up, and eventually he got very insulting and used language that you or I would not take from anybody and I shook him and boxed his ears.'

"'Court—More than once?'

"'A. I think more than once.'

"'Q. So as to inflict any bodily injury?'

"'A. There were no marks on him. I struck him with my open hand over his ears.'

"'Q. You struck him in consequence of his using insulting language to you?'

"'A. Yes, sir.'

"'Q. After you had shook him and boxed his ears, as you say, did you have any further conversation with him?'

"'A. None, we left him.'"

Two or three days after the incident thus related the defendant, after having been seen privately by one Kawahara at his house he took refuge the morning after the murder, made a confession in the courthouse in presence of Sheriff Coney, Deputy Sheriff Rice, Mr. Doyle, Mr. Prosser and Mr. Sheba, the last-named being the Japanese editor of the Garden Island newspaper. Before the defendant made his statement he was charged by the sheriff to "tell the truth," because other witnesses had implicated him. Mr. Sheba testified that the defendant was warned before making any statement that everything he might say would be used against him. It was on cross-examination that the sheriff said he told the defendant to tell the truth "because other witnesses had implicated him." The Supreme Court says:

"It is not clear that this fact of the implication by other witnesses was communicated to the defendant by the sheriff. If, however, he had stated this to the defendant, though it was an improper statement to make to him, we do not think that under the circumstances this alone should render the confession inadmissible."

The court considers the case of Bram vs. United States, where a confession was rejected for a similar statement but as one of a number of circumstances taken together, concluding that the other facts in the Bram case were not all analogous to this case. In the Bram case the defendant was subjected to great personal indignity and browbeating. It is found that the admission of the confession in evidence by the trial court in this case was a correct ruling. Also, it is found that "the misconduct of Doyle on the occasion two days previous" did not have any influence in causing the defendant to make the confession. "The assault, though inexcusable, was in fact trivial in its nature." All of the circumstances showed that it made a very slight impression, if any, upon the defendant.

"Notwithstanding this," the court says, "the action of Doyle on that occasion calls for severe condemnation. To lay his hands at all on one held under arrest was a cowardly thing to do and a gross violation of the rights of the prisoner. A confession made at that time and under those circumstances could not have been received in evidence, for the law cannot measure the force of the influence used, or decide upon its effect upon the mind of a prisoner, and therefore excludes the declaration if any degree of influence has been exerted.

"The whole procedure of police inquisition known as the 'sweat box' is a matter which has no warrant of law. It is entirely at variance with the spirit of the common law. As pointed out in Bram vs. United States, it is condemned by the English courts as unfair to the prisoner and approaching dangerously near to a violation of the rule protecting an accused person from being compelled to testify against himself. Without holding that no interrogation can be put by the police to a person arrested on suspicion, such investigations must be conducted with a due regard for the rights of the accused, and must be free from browbeating, intimidation and undue pressure of any kind."

THE WRIT UNLAWFUL

Judge Gear Exceeds His Powers In Habeas Corpus.

Judge Gear is found by unanimous opinion of the Supreme Court, written by Chief Justice Frear, to have committed error in granting a writ of habeas corpus for the release of Goto, sentenced by another Circuit Judge to pay a fine of $350 and costs on his plea of guilty to the charge of selling liquor without a license. This decision is on a writ of error sued out by Arthur M. Brown, High Sheriff. E. C. Peters, Deputy Attorney General, appeared for plaintiff in error, and Catheart & Milverton for defendant in error. The syllabus of opinion reads as follows:

"Circuit Courts have not jurisdiction to issue writs of habeas corpus in cases in which such writs are not demandable of right. Such jurisdiction is confined by the statutes to the Supreme Court, its Justices and the Circuit Judges. The jurisdiction to issue such writs is not inherent in the Circuit Courts in the sense that the Legislature cannot vest it in other courts or in the judges, to the exclusion of the Circuit Courts as such, nor does the Organic Act deprive the Legislature of such power."

Judge Gear released Goto from prison, to which he was committed in default of paying his fine, on habeas corpus for the reason that his punishment was infamous and therefore unlawful without his having been indicted by a grand jury. On the writ of error it was contended "(1) that the Circuit Court was without jurisdiction to issue writs of habeas corpus and (2) that the offense was not infamous and so could be tried on information and complaint." The appellate court says: "No opinion need be expressed upon the second of these contentions, as we are of the opinion that the first must be sustained."

Reviewing the laws on the subject the court says: "So far as the statutes go, therefore, a Circuit Court cannot issue a writ of habeas corpus in a case in which it is not demandable of right and probably not in any case."

A case of the writ being "not demandable of right," as explained to an Advertiser reporter, is where the writ is employed instead of the right of appeal by a convicted person to escape punishment. If habeas corpus were available for such a purpose and within the power of the lower courts to grant, the result would be that criminal cases would take that route as the shortest and one judge would decide appeals from another judge in disregard of the appellate court of the country.

CALIFORNIA GROWERS HELPED BY HAWAII

California fruit growers may, according to information that has been received by the horticultural commissioner of California, be greatly benefited, to the amount of many thousands of dollars, by a proposed move in Hawaii to shut out fruits from portions of the world where insects dangerous to vegetation infest trees and fruit. This will compel purchases here. Alexander Craw, who is now the Hawaiian superintendent of entomology, has recommended to the board of commissioners of agriculture and forestry that all fruits from China, Japan and other Asiatic points shall be denied entrance into Hawaii.

The dreaded fruit fly abounds in these places. These flies belong to the same family as the melon-cucumber fly, against which California has quarantined. So great have been the ravages of the fruit flies that in Queensland and Western Australia fruit can hardly be raised. In Cape Colony, South Africa, fruit trees must be covered with mosquito netting to enable the horticulturists to raise a crop. This makes fruit growing a very expensive business, even where the government buys the netting and furnishes it to the farmers free of cost to them.

Importations of fruit from China and Japan have recently been received at Honolulu in which also were contained the larvae of the Chinese fruit moth.—California Fruit Grower.

DILLINGHAM PROPHESIES A BRIGHT FUTURE FOR HAWAII

Railroad and Plantation Promoter Paints a Vivid Picture of Prosperity for the Islands with Prevailing High Prices for Sugar.

B. F. Dillingham, in robust health and as keen and active as ever in affairs, returned from San Francisco yesterday after a long absence. Mr. Dillingham is optimistic over the future of the islands and considers the financial outlook the best. He thinks the sugar situation strong and he believes that it will continue so for two or three years.

"I think Hawaii is in very much better shape financially than she has been for some time," said Mr. Dillingham yesterday. "I think there is a fine outlook and the people ought to feel encouraged. According to sugar statistics the surplus is entirely wiped out. It stands to reason that there will be less sugar to sell, and therefore it should bring higher prices.

"The present situation in the sugar market will tend to stimulate production but I don't think there is anything to be afraid of.

"All these new sugar plantations have got just as good a show as any in the country. All they need, and have needed, is a good price for their output—they naturally have to receive as much or more for their sugar than it costs to produce it. I think people will do well to invest in them. I see by the stock quotations the prices are going up and seem to be firm.

"We all want to see sugar go up, because it is a financial necessity for the future of the islands to have a good price for the output. The price has gone up steadily and will stay until the production catches up with the consumption. The production is still in arrears.

"I think we are likely to have a good paying price for at least three years.

"People on the coast expect to see Hawaii do well. Every one I have met seems sanguine as to the future of the islands. Of course there are only a few Hawaiian stocks on the San Francisco Stock Exchange, and those are the stocks which are most familiar to the general run of coast people and they judge by that standard. There are few agents of the other plantations there, except, say, Ewa, McBryde, and Olaa.

"I think there is going to be great prosperity here in the sugar business if prices hold up anywhere near where they are for a few years. That will put this country in a fine financial condition.

"Of course, if the islands endeavor to increase the output it is going to take a lot of time and money to do so. Many of the new plantations are just getting to the point where they are a factor. It takes time to bring a plantation up to the point of paying dividends.

"Looking back over the history of some of our best paying plantations, you can see they did not pay dividends at first. Take the Hawaiian Agricultural Company for instance. It was eight years before that company paid a dividend. When the machinery arrived on the beach, a commission was appointed to go over to the plantation and see whether it was worth while putting up the machinery. Some wanted to abandon it altogether. That committee, to the best of my recollection, reported in favor of abandonment. There was one man, however, Henry May, I believe, who had backbone enough to keep at it and finally they went ahead with the proposition. Ewa did not pay a dividend until 1896, or six years after it was started. And so you can go through the history of all the plantations.

"Yes, I feel better now than for many years."

CAPT. LYON, THE NEW NAVAL CHIEF, TALKS OF HONOLULU

"I find that Honolulu in its physical aspects has changed very greatly, and for the better, since my visit here in the long ago," said Captain Henry W. Lyon, the new commandant of the Naval Station, last night.

Captain Lyon sat on the lanai at the Hawaiian Hotel, and smoked an after-dinner cigar in reminiscent mood. "It is a little too soon, is it not," he asked in the beginning, "to get my impressions of this beautiful island city?

"Yes; if you put it that way. I was here many years ago, and I note many changes. Honolulu, in its physical aspects, has changed very greatly and for the better. The place is still as always very beautiful, a charm about it that is most attractive.

"I find that many new modern buildings have gone up since my time, and the residence section has spread very greatly out toward the Punahou district. The people used to live, for the most part, up Nuuanu valley and within a close radius of this hotel, with some residences at the beach. A new city has grown up and there are many beautiful homes in a section which, in my time, was wild land.

"Especially noticeable in the Honolulu of today is the street car system. It is wonderful in its completeness and its efficient service. Why, you can go anywhere on the electric cars here. I have been in most of the cities of the world, I think, and I know nothing to equal it anywhere in a town of this size.

"I notice, too, that the harbor here is much better, larger and more commodious than it used to be. In my time the war vessels used to have to tie up to the reef. Now there are good wharves and the ships can come right alongside, and harbor facilities equal to the best—and there is nothing over at the Reef at all.

"No. I know next to nothing of Pearl Harbor as yet. I have not visited the place, but must do so at once because I want to get acquainted with all the parts of my bailiwick. You see, I have hardly had time to study matters up, having only gone into the most pressing details with Admiral Terry. But we must get ready to do something at Pearl Harbor, I suppose, and it is the more important to do this because I see that it is reported that the army has purchased or is purchasing fortification sites there. That will mean work for us.

"To come back to Honolulu, I find many changes, and for the better. This hotel, even, has changed and improved, and this is particularly noticeable in these broad and comfortable porches. There could be nothing more pleasant in this climate."

ONE MORE DAY PASSES

Fisher's Testimony Held Good By Court.

Stephen Mahaulu's trial for embezzlement of public moneys has dragged through another day. After Judge Gear delivered his ruling on the Governor's refusal to appear as a witness elsewhere reported, Deputy Attorney General Prosser moved that the jury be instructed to disregard the statements just made by the court.

Judge Gear said the motion was quite proper and accordingly instructed the jury that nothing contained in the ruling of the court should be regarded by them as evidence.

Mr. Prosser was about addressing the court on the subject of certain Land Office schedules, the admissibility of which was under contest when the trial was adjourned on Friday. The court cut him short with a ruling that the schedules would be admitted.

J. H. Fisher, Auditor of the Territory, then resumed the witness stand. His examination on the Land Office records was concluded. On cross-examination he admitted that upon his appointment to office he had placed his resignation in the Governor's hands, and then on redirect examination testified that he did not know whether or not his resignation had been accepted.

Mr. Thompson for the defendant then moved that the testimony of Mr. Fisher be stricken out on the ground that he was not the Auditor of the Territory because he had given his resignation to the Governor.

Judge Gear took until after recess to rule on the motion. When the court resumed at 2 o'clock he denied the motion. After some remarks based on the Organic Act to the effect that the taking of undated resignations from officials by the Governor was illegal, adding that if the appointment and resignation were both valid the official might withdraw his resignation at any time, the court thus decided:

"There being no doubt that Mr. Fisher has been and is now acting as a de facto officer of a de jure office his testimony should not be stricken out, even if he does not hold the office under a full and legal appointment. The motion to strike out on the ground stated will therefore be denied."

Auditor Fisher was then again called to the stand, this time to be examined on the books of the Treasury with relation to the case.

Mr. Prosser expects to conclude the case for the prosecution today.

PARKER CASE INNINGS.

There was an irruption of attorneys in the Parker guardianship matter yesterday morning, the Mahaulu trial being sidetracked for a few minutes until the court should find what it was all about.

Mr. Magoon, attorney for petitioner Low, wanted to have the testimony of J. T. McCrosson taken before he left for the mainland on Wednesday.

Mr. Kinney, of counsel for the guardian, raised a laugh by saying, "We do not wish to press those contempt proceedings against the court," the allusion being to the suspension of the case pending the appeal to the Federal Supreme Court on the question of jurisdiction.

Judge Gear said he had received no restraining order from the Supreme Court. It was quite proper to have Mr. McCrosson's testimony taken, but the court would not hear the whole matter at that time owing to the Mahaulu trial.

The taking of Mr. McCrosson's testimony was set for 4 o'clock, when it proceeded with all parties to the litigation represented.

ARRAIGNMENTS.

A. McDuffie's pleas, under indictments for receiving bribes as a police officer, were further continued yesterday until tomorrow.

William Hoopii pleaded not guilty to burglary.

Kuramatsu pleaded not guilty to manslaughter.

MANDAMUS TO DE BOLT.

A writ of mandamus to Judge J. T. De Bolt has been ordered to issue by Chief Justice W. F. Frear, on the petition of John D. Spreckels and Adolph B. Spreckels, partners under the name of John D. Spreckels Brothers. The writ is made returnable before the Supreme Court on Monday, Dec. 5, at 10 a. m., and commands Judge De Bolt to proceed with the hearing of the cause of Charles A. Brown vs. John D. Spreckels and others or show cause to the contrary.

There is a history of the cause given in the petition. It is an action in ejectment which was filed in the Fourth Circuit Court in December, 1899, and came on for hearing before Judge Little, who after one mistrial ordered a nonsuit to be entered. This order was reversed by the Supreme Court and a new trial ordered. Thereafter the present petitioners moved for a change of venue, which was contested by the plaintiff but without raising the point of Judge Little's disqualification, and Judge Little ordered a change of venue to the Third Circuit Court, to which no exception was taken by the plaintiff.

A trial in the Third Circuit Court resulted in a disagreement of the jury, whereupon the parties stipulated that the cause might be transferred to the First Circuit Court. Judge Edings ordered the cause so transferred.

The cause was tried in the First Circuit Court before Judge Gear, when a disagreement of the jury resulted. At the present term the cause was assigned to Judge De Bolt and, at its calling, counsel for plaintiff for the first time raised the question of the disqualification of Judge Little to make the order changing the venue. Judge De Bolt thereupon refused and still refuses to proceed with the trial or to set it for hearing, for the reason that Judge Little was disqualified, by reason of having given a judgment of nonsuit, from subsequently making an order of change of venue.

The petitioners contend that the reason of Judge De Bolt is insufficient in law, therefore pray for the writ of mandamus. The lawsuit relates to lands on the Hilo waterfront.

GUARDIANSHIP CONTEST.

Judge De Bolt yesterday further heard the petition of Rebecca Kanahele for the removal of E. P. Kalama and the appointment of herself as guardian of two minor girls. Resuming today the court will visit the house of a native woman, a witness in the case, to take her testimony there owing to her inability to attend court.

The jurors in Judge De Bolt's court are required to be in attendance on Thursday.

CASE OF THE MILLS.

By unanimous decision of the Supreme Court, written by Justice Hartwell, the exceptions of defendant to the verdict are sustained in the case of Pacific Mill Co., Ltd., vs. Enterprise Mill Co., Ltd. The verdict is set aside, the judgment thereon vacated and the case remanded to the First Circuit Court for a new trial. Robertson & Wilder for plaintiff, Ballou & Marx for defendant.

The action was a case for damages of $2079.27 for unlawfully taking possession and converting to his own use by the defendant of certain goods and chattels belonging to the plaintiff. A jury on March 18 last rendered the verdict now set aside, awarding the plaintiff $800 with interest at 6 per cent per annum.

Emmett May, now absent from the Territory, is head of the Pacific, and Peter High of the Enterprise company.

HANA PLANTATION CASE.

In the suit of Sigmund Greenebaum and Charles Altschul, trustees, vs. Hana Plantation Co. and others the Union Trust Co. of San Francisco, one of the defendants, has filed an answer and cross bill. It denies that the first mortgage of Hana Plantation Co. to the plaintiffs covers, includes, or is a lien upon the sugar mill, railway, rolling stock and any personal property acquired after the mortgage was given, also denies that it is a lien on the crops of sugar cane now growing on the lands mentioned in the complaint of plaintiffs. For itself the Union Trust Co. complains against the plaintiffs and Hana Plantation Co., setting up the facts of its second mortgage on the property to secure payment of its mortgage bonds of $100,000 held by this complainant, with interest from January 1, 1904. The prayers of the cross bill are for adjudication of the Union Trust Co.'s lien, for an accounting, for the appointment of a receiver, for a sale of all of Hana Plantation Co.'s property, for application of the proceeds to satisfy this complainant's claim and to pay its reasonable counsel fees, costs, etc., and for such other and further relief as to the court may seem proper.

COURT NOTES.

Mrs. Noblitt was appointed by Judge De Bolt as administratrix of the estate of her late husband, Dr. William S. Noblitt, under a bond of $3000. C. A. K. Hopkins, J. A. Thompson and P. H. Burnette were appointed as appraisers of the estate.

Julio P. Rego petitions that J. J. Rodrigues be appointed guardian of his minor brothers, Jose P. and Manuel do Rego, who have certain property interests to be guarded.

Kealoha M. Kealiihooluhi has brought a divorce suit against Kealiihooluhi on the grounds of intemperance and failure to support her.

Fusa Hirota is suing for divorce from Bunzuchi Hirota on the grounds of extreme cruelty and non-support.

E. Madden is manager of the Kukaiau Mill Co., not George Osborne, as stated.

HUSBANDS AT HOME

High Sheriff's Quiet Sunday Aids Wives.

"It was a quiet Sunday," said High Sheriff Henry yesterday. "It was kept in a manner which should not arouse criticism at any point. The rain did much to help us and I guess most men were glad to stay at home.

"It appears to me," the High Sheriff continued with a smile, "that the wives in this city ought to thank me for arranging Sunday so that their husbands will stay at home.

"Wives are generally complaining about the lodges keeping their husbands out at night. They say that their husbands work during the week days and go to lodge at night, so that they see very little of them. Now with a quiet Sunday there is no reason on earth why husbands should not stay at home all day with their wives."